IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3046 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGLABEN BABUBHAI SONI
Versus
STATE OF GUJARAT

Appearance:
MR AJ PATEL for Petitioner No. 1-3
MR MUKESH PATEL, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Petitioners have approached this Court for appropriate writ seeking direction to quash and set aside the decision of respondent no. 2 contained in communication at Annexure : Q, dated 12.2.2001 rejecting the application for compensation and for direction to respondent no. 2 to make a Reference to the District Court under Sec. 18 of the Land Acquisition Act (hereinafter referred to as "the Act") or to make payment of the amount of additional compensation to the petitioners as per amended award at Annexure : A dated 30.10.902 under Sec. 28A(1) of the Act.

#. Short facts which are relevant for deciding this petition are as under.

#. The petitioners herein being legally entitled to purchase the agricultural lands, purchased the land bearing Survey No. 172 originally admeasuring 1 Acre and 22 gunthas which was found to be admeasuring 7264 sq. mts. ultimately. The said piece of land is situated at village Vavol Taluka and District Gandhinagar. One Shri Somalal Narsibhai was owner of the said parcel of land and on receiving consideration of Rs. 48,000/- executed the registered sale deed on 30th April, 1981 in favour of the petitioners and thus the petitioners became owners of that piece of land.

#. It appears that after the sale, proceedings were initiated under Section 84(C) of the Bombay Tenancy & Agricultural Lands Act (hereinafter tobe referred to as the "Tenancy Act") with respect to the said piece of land and Mamlatdar and the appellate authority decided against the present petitioners. However, the Gujarat Revenue Tribunal in Revision Application No. TEN. B.A. 862 of 1984 on 17.6.84 allowed the revision application after hearing the State and erstwhile owner. We are not required to refer to the details, but for the purpose of this petition, it is required to be stated that the Tribunal held that when the petitioners purchased the lands, there was a policy decision of the government and in purchasing the land of Vavol (the piece of land in question), they can be stated to have acted in view of the order in force. Therefore, it was not proper for the Mamlatdar to initiate action under Section 84C for sale transaction. Ultimately, the Tribunal held that the action taken by the Mamlatdar was not justified and therefore, the petitioners were held to be the rightful owners of the land from the date of the sale deed dated 30th April, 1981. It is admitted that the decision of the Tribunal has become final and therefore, neither the

Land Acquisition Officer nor the State Government can act contrary to the said decision. An important aspect required to be borne in mind is that the copy of the judgment is in the file of the Land Acquisition officer.

#. With this background, how the piece of land came to be acquired is required to be considered. The State Government for the purpose of Gandhinagar Capital Project wanted to acquire the lands and notification under Section 4 of the Act was published on 30th June, 1983 covering the land of the petitioners. Notification under Section 6 of the Act was published on 22.9.86. Thereafter the Land Acquisition Officer made an award on 22.9.86. Since the proceedings under Section 84C of the Tenancy Act were pending and since it was held that the land vested in the State Government under Section 84C of the Tenancy Act, award was made in favour of the original owner as well as the State Government.

#. In para 6 of the petition, the petitioners have pointed out that though award in respect of the land in question was made in favour of the original owner, notices under Section 4(1) of the Act were in fact served on the petitioners. The petitioners in response to the notices submitted reply before the District Collector, Gandhinagar on 5.8.83. Respondent no. 2 thereafter served two notices on petitioner no. 1 dated 16.8.83 and 6.10.83, requiring him to remain present in person before him for the purpose of hearing of application dated 5.8.83. The aforesaid aspects are not denied by the State Government.

#. In para 8 of the petition, the petitioners have stated that by communication dated 21.4.93, petitioner no. 1 was informed by the Special Land Acquisition Officer, Gandhinagar that the ownership of the land was not determined, and till it is decided, the amount of compensation can not be paid to the petitioners. This aspect has also not been denied by the respondents.

#. Some of the claimants of the lands made applications under Section 28A(1) of the Act for additional compensation to respondent no. 2, on the basis of the award made by the Extra Assistant Judge, Ahmedabad (Rural) on 22.2.91. It is required to be noted that the Special Land Acquisition Officer, Gandhinagar by his order dated 30.10.93 (Annexure : A) made an additional award under Section 28A(1) of the Act and held that the claimants were entitled to the additional compensation as per the order made by the High Court on 14.9.94 in First Appeals filed against the award made by the Reference

Court. Award made under Section 28A(1) (Annexure : A) specifically refers to the lands bearing Survey No. 172 admeasuring 7254 sq. mts., ownership of which vests in the petitioners. There is specific reference that so far as the land in question is concerned, additional amount at the rate of Rs. 80/per sq. mts. is to be paid. There is also reference to payment of additional payment. Reading the order, it is also clear that 75% of the amount was required to be paid to the claimants and 25% amount was required to be deposited in the Bank. By that award, a direction was given to make payment of 75% of the amount to the claimants. Possession of the land had been already taken.

#. As the petitioners were lawfully entitled to the amount of compensation and as they were deprived of the amount of compensation, solatium, costs etc., Special Civil Application No. 1916/97 was preferred before this Court and the Division Bench (R.A.Mehta & R.K. Abichandani, JJ) on 11.4.97 made an order which reads as under.

"Rule.

Mr. D.N. Patel waives service.

The petitioners' lands have been acquired under the Land Acquisition Act and award has also been passed in respect of their lands, awarding compensation, solatium and costs. However, the petitioners have not been paid the amount. By an order dated 18th September, 1995 (page 52), it is recorded in the order that the petitioners are entitled and are to be paid the compensation as per the award dated 22nd September, 1986 in respect of Survey No. 172 to the tune of Rs. 2,68,107/-. Even though this order has been passed, the petitioners have not received this amount. It appears that the amount is paid to someone else. The learned AGP has stated that in respect of that payment, appropriate proceedings are undertaken to see that the payment wrongly made be recovered and the persons responsible for the same are dealt with in accordance with law.

In view of the admitted position, this petition has to be allowed by directing that the respondents shall pay to the petitioners compensation as per the award dated 22nd September, 1986 in the Land Acquisition Case No. 10 of 1983 with interest at the rate of 9% per

annum for the first year from the date of taking possession of the land till the amount is paid to the petitioners and at the rate of 15% per annum for the subsequent years under Section 34 of the Land Acquisition Act.

Rule is made absolute with costs.

The amount shall be paid to the petitioners within one month from today. Direct service."

Reading the order, it is very clear that before the Division Bench it was made clear that the petitioners were entitled and were required to be paid compensation as per the award. Even the learned AGP made a statement that appropriate action will be taken to see that the persons who have wrongly paid amount are dealt with in accordance with law. That amount has been paid to the petitioners and there is no dispute about that.

##. It is required to be noted that vide Annexure:C, an application was made to the Land Acquisition Officer by petitioner no. 1 herein for making a Reference under Section 18 of the Act. On 11.11.86 that application was made i.e. within time prescribed, and the Land acquisition Officer was required to act strictly in accordance with law. It seems that he has not taken any action in the matter. As the petitioners were told that the amount will be paid to the original owners, an application vide Annexure : D dated 18.12.95 was addressed to the Special Land Acquisition Officer, Gandhinagar, pointing out therein that the order was passed on 18.9.95 being No. LAQ 10/83 Vashi 1533, whereby it was ordered that the amount of compensation should be paid to the petitioners. However, it was brought to the notice that the amount is paid to the original owner and therefore, a request was made that the amount should be paid to the petitioners and that their application be treated as objection application. On 11.11.96, Annexure : E was forwarded to the Special Land Acquisition Officer, Gandhinagar. When the amount was paid to the petitioners on or about 27.8.97, in view of the direction of the High Court, a letter was also addressed vide Annexure : F dated 27.8.97 pointing out that despite the repeated representations, amount as required under the law has not been paid to the petitioner and the amount which has been paid to the petitioners has been accepted under objection. A request was made that after calculating the amount as per the order made by the High Court, payment should be made to

the petitioners immediately.

##. The Special Land Acquisition Officer in September, 1997 addressed a letter Annexure : G pointing out that the amount which has been paid in view of the order made by the High Court has nothing to do with the provisions made in Section 28A of the Act. It was further stated in the said letter that before the acquisition proceedings could be completed, the land in question was transferred and as the sale has been accepted, amount under Section 28A(1) of the Act is not required to be paid to the heirs of the deceased Somabhai Narsibhai - original owner and nothing is required to be done by the Land Acquisition Officer in this behalf. It was further stated that an application was required to be made within a period of three months after the decision was rendered by the Court and no application was made within the prescribed period. Stating this, the Special Land Acquisition Officer indicated that the application is filed. There is further correspondence placed on record which is dated 17.7.98 addressed by the Under Secretary, Revenue Department, State of Gujarat to the Special Land Acquisition Officer, Gandhinagar indicating that the amount required to be paid must be paid in accordance with law. But it seems that the Special Land Acquisition Officer was sitting tight over the matter and was not paying any heed.

##. It is surprising that vide Annexure : J dated 12.11.97, the Special Land Acquisition Officer addressed a letter to the petitioners pointing out whether any Reference has been made under Section 18 of the Act or not and if application has been made, the details should be forwarded immediately. We would like to state that though papers were in the file of the Special Land Acquisition Officer, it seems that with an ulterior motive, letters were written. When the application for making a reference to the Court was in the file, there was no reason for the Special Land Acquisition Officer to write a letter. When the application was made within the prescribed period after the award made by the Land Acquisition Officer, what was the reason for the Special Land Acquisition Officer not to make a Reference to the competent court is also not at all explained in the affidavit of the State or in the affidavit of the Special Land Acquisition Officer. We will advert to this aspect a little later but in the instant case, the petitioners vide letter at Annexure : K dated 19.11.97, forwarded a copy of the Reference Application. It is thereafter on 31.7.98, Special Land Acquisition Officer addressed a letter that Reference application made on 11.11.86 under

Section 18 of the Act should be withdrawn and if an undertaking is given to withdraw the Reference, only thereafter procedure for making compensation under Section 28A(1) will be undertaken. We fail to understand as to under what provision of law, the Special Land Acquisition Officer was authorised to call upon the petitioners to withdraw the Reference made under Section 18 of the Act. He failed in discharge of his duties by not making Reference to the Court and on the contrary, called upon the petitioners to withdraw the Reference so as to see that he is not held liable for any negligence on his part. So as to see that if the application under Section 18 is withdrawn, the petitioners may be held not entitled to get any compensation and, the Special Land Acquisition Officer himself can take a decision that the application made under Section 28A(1) of the Act was time barred.

##. In view of this letter written by the Special Land Acquisition Officer, realising that the officers are not acting in accordance with law, the petitioners on 5.8.98 vide Annexure : M stated that they are giving undertaking to withdraw the Reference. It was specifically mentioned that as assured by the Land Acquisition Officer to carry out the procedure for making payment of compensation under Section 28A(1) of the Act and also as desired by the Special Land Acquisition Officer, Application for Reference made under Section 18 of the Act is withdrawn. Thus, it is very clear that the Special Land Acquisition Officer called upon the petitioners to withdraw the application to enable him to make payment under Section 28A(1) of the Act and with that understanding the petitioners withdrew the application seeking Reference under Sec. 18 of the Act.

##. At this juncture, it is required to refer to the statement made in the affidavit by the deponent namely Shri Malvat, Special Land Acquisition Officer, Ahmedabad. In para 7, it is stated that the Special Land Acquisition Officer has informed that there is no question of paying compensation on the basis of application under Section 28A(1) of the Act and due procedure for sending the matter of Reference Application under Section 18 of the Act would be carried out. We are told that the letter is addressed to the Under Secretary on 27.11.97. The Special Land Acquisition Officer has stated that the Special Land Acquisition Officer addressed a letter on 12.11.97, whereby he made inquiries from the petitioner Mangalaben as to whether she has preferred any Reference under Section 18 of the Act, and if filed, details thereof may be sent. It appears that the deponent of

this affidavit while filing affidavit ought to have stated clearly that despite the Reference Application existing in the file earlier Special Land Acquisition addressed the letter. The deponent was required to state correct facts before the Court. However, he has not disclosed the correct facts and necessary record before the Court and only on inquiry, the application was shown. The said officer has further stated that in reply to the same, for the first time, the petitioners informed the Land Acquisition Officer by a letter dated 29.11.97 that she has also made Reference application under Section 18 of the Act. On perusal of file, it is required to be noted that his attention was drawn to the application made under Section 18 of the Act and was questioned as to why the same was not forwarded to the Collector in accordance with law. The deponent on behalf of the State has tried to say that it was not open for the petitioners to simultaneously proceed under Section 18 of the Act as well as under Section 28A(1) of the Act. It is required to be noted that application under Section 18 of the Act was made on 11.11.86 in connection with which the petitioners were never informed that the application has been forwarded to the Court or that the application has been rejected. From 1986 onwards till 1997 what action has been taken on this application is not indicated.

##. At this juncture, we would like to refer to the provisions contained in the Act. Section 9 of the Act refers to notice to persons interested. It is required to be noted that in the instant case, under Section 5A of the Act, hearing was given to the petitioners. They were heard and there is no dispute about the same. The petitioners were in possession and therefore, not only as the owners of the land but as the persons in possession were also interested in the land. Thus, there is ample material that the petitioners were interested in the piece of land. Section 18 of the Act, if read, it becomes clear that any person interested who has not accepted the award may, by a written application to the Collector, request to make a Reference to the Court for determination of the amount. It was not open for the Collector to put the application in his drawer or in the file. As a matter of fact, under Section 19 of the Act, the Collector has to forward a statement to the Court. He was required to indicate the names of the persons whom he had reason to believe as interested persons in such land. Thus, it is not for the Collector to file an application for Reference. It was his bounden duty to make a Reference as sought by the petitioners. The petitioners were the persons interested. There was sufficient material with the Land Acquisition Officer

that earlier there was dispute at the relevant point of time regarding the title of the land which was set right by the Gujarat Revenue Tribunal and knowing full well this aspect, the Special Land Acquisition Officer acted contrary to law.

##. We requested the learned A.G.P. to disclose the name of the officer who addressed the letter on 31.7.98, calling upon the petitioners to withdraw the application under Section 18 of the Act as a condition precedent to process the application under Section 28A(1) of the Act. Learned A.G.P. at this stage stated that one Mathurbhai A. Patel was the officer who addressed the letter dated 31.7.98. This is stated under instructions of Mr. Malvat, who has sworn the affidavit-in-reply in this petition. Before writing this letter on 17.7.98, the Deputy Secretary, Revenue, State of Gujarat, Gandhinagar addressed a letter in September, to make payment under Section 28A of the Act for the land bearing Survey No. 172 of Vavol village, Taluka and District Gandhinagar, to Mangalaben Soni. Attention of the Special Land Acquisition Officer to the aforesaid letter dated 17.7.98 addressed by the Under Secretary, Revenue Department, State of Gujarat was drawn that the State Government has taken a decision to make payment under Section 28A of the Act to the claimants on condition that Reference under Section 18 is withdrawn. Thus, it is clear that that was the decision taken by the State Government. It is required to be noted that the petitioners being claimants and interested persons submitted an application for making Reference and with a view to see that there is no duplication, in our opinion, the State Government rightly took the decision to make the payment under Section 28A(1) of the Act to the claimants. It is in view of this, a letter was written on 31.7.98, but a somersault was taken by the Land Acquisition Officer after asking the petitioners to withdraw the Reference application by stating that the application made under Section 28A of the Act is time barred and the claimants are not entitled to any compensation. This high handed action has been challenged in this petition.

##. From the affidavit-in-reply, it appears that the officer is still under the impression that the Court has issued only notice and he is filing the affidavit for the purpose of admission. Though process has been served on the respondent - Special Land Acquisition Officer stating that the Court has issued rule which is made returnable on 20th June, 2001 and served on the deponent, affidavit is filed indicating that only notice is issued which shows nothing but the ignorance of the Court proceedings.

From the file also, it appears that the papers were in the file, yet inquiries were being made from the petitioners and that shows casual approach and how the citizens are being harassed. It was known to the deponent that there was a dispute about the ownership which was clearly set right by the Gujarat Revenue Tribunal. This is referred in para 4 of the affidavit and we have seen the judgment which is in the file papers. Therefore, it is clear that since 1994, Special Land Acquisition Officer was aware about the situation. No doubt, application under Section 28A of the Act dated 15.7.91 made by Shri Somabhai was considered by an order dated 30.10.93 and compensation at the enhanced rate was also ordered. However, when an application was made by the heirs of the deceased Somabhai, order was amended as stated in the affidavit, whereby it was held by the Land Acquisition Officer that the said amount is not payable to the legal heirs of deceased Somabhai as deceased Somabhai had already transferred the land by a registered sale deed on 30.4.81 and that too before the land was acquired and on the other hand, the title and the ownership of Mangalaben was accepted by the Tribunal. It is also clear that it was within the knowledge of the deponent on behalf of the State that the legal heirs of the said Somabhai have not preferred any proceedings against the said amended order dated 22.1.96. If that is so, then for what reason, the amount was not paid to the owner is difficult to understand. It is equally difficult to understand as to why the petitioners were persuaded to withdraw the application under Section 18 of the Act and thereafter amount of compensation was not paid despite the order made by the State Government as reflected in the order dated in the order dated 17.7.98 which is signed by the Under Secretary. Copy of the letter is ordered to be taken on record. In para 10 of the affidavit-in-reply, the Special Land Acquisition Officer has stated that application for making Reference under Section 18 of the Act was not sent for Reference in view of the fact that the titles were not clear. Under Section 30 of the Act it was not for the Special Land Acquisition Officer to decide and it was for the Civil Court to decide as to who would be the persons entitled to get compensation. Under section 30 of the Act, it was the bounden duty of the Collector to refer the matter to the Court. Section 30 of the Act reads as under.

"When the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such

dispute to the decision of the Court."

But in the instant case, after the Land Acquisition Officer has made award he was made aware that the title vests in the petitioners, yet the Special Land Acquisition Officer has asked the petitioners to withdraw the Reference application and that is nothing but arbitrary, malafide and capricious action. From the file which is perused, it is clear that the Land Acquisition Officer was aware about the judgment rendered by the competent Tribunal in respect of land in question in favour of the petitioners. It was the duty of the Special Land Acquisition Officer to forward the application to the court for rendering the decision not only under Section 18 but also under Section 30 of the Act as the petitioners were interested in the land.

##. We find no substance in the say of the deponent on behalf of the State. It seems that at the last stage, it was stated that the officers were not making payment as earlier some prosecutions were launched. The officers should have passed appropriate orders. The Special Land Acquisition Officer despite the papers lying in the file and without deciding the matter, adopted a mode which is contrary to law. In the result, the petition stands allowed. The amount of compensation which is required to be paid shall be paid within a period of 8 weeks to the petitioners as determined under the award under Section 28A(1) of the Act on 30th October, 1993 at Annexure : A with interest as admissible under the law with all consequential benefits which would flow from the order.

##. The real question is that the interest at the rate of 15% will have to be paid for the inaction of the officer and the State exchequer will be burdened unnecessarily. Would it be proper to pay interest from the State exchequer to the petitioners merely because the Special Land Acquisition Officer remained negligent in discharge of his duties and despite the order made by the State Government as found in the letter dated 17.7.98 and his own assurance to make payment. The present market rate is 8% or 9%. Each days's delay would cause loss to the State and the petitioners would gain by getting higher rate of interest. We are told that Mr. Malvat has joined very recently as Special Land Acquisition Officer on 9.5.01 and obviously, he was not in the picture at the relevant point of time. Therefore the officer who did not make a Reference failed in his duties. No explanation is placed before the Court for not making a Reference. If the amount would have been deposited in the Court in view of Section 30 of the Act,

no further liability to pay interest would arise. It is also required to be noted that the State Government vide letter dated 17.7.98 conveyed the decision of making payment to the petitioners in accordance with the order passed under Section 28A(1) of the Act (Annexure :A). Instead of making payment, the concerned officer called upon to withdraw the Reference application on assurance that amount will be paid as already determined. On withdrawal of the application, refusal to pay on the ground of limitation is contrary to one's own promise and the author of the letter can not be allowed to back out from the assurance/promise. Had he not given the assurance, the claimants would have insisted to make Reference. Respondent had even otherwise acted not only contrary to his own promise but contrary to the letter issued by the Secretary to the Government of Gujarat.

##. Even on receipt of letter dated 21.7.98 if the Special Land Acquisition Officer would have made payment within a reasonable time, the petitioners would not have made any grievance. The officer who on receipt of the aforesaid letter failed to pay the amount despite withdrawal of Reference application is also answerable. For this, inquiry is required to be held by the State Government. In our opinion, this is a fit case, wherein direction should be issued to the Chief Secretary to hold an inquiry against the erring Special Land Acquisition Officer and to recover the amount of interest if he is found negligent in discharge of his duty. The Chief Secretary may entrust the inquiry to the Secretary of his choice. It goes without saying that he shall keep in mind the provisions of the Act. He shall also bear in mind that the State exchequer should not suffer for want of diligence on the part of the officers. The inquiry shall be completed within a period of three months and the report thereof shall be placed before the Court. The petition stands allowed with cost which is quantified at Rs. 25,000/-. The amount of costs to be also recovered from the erring officer. Rule is made absolute. Registry is directed to notify the matter for reporting compliance after 4 months.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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